

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 20 October 2006**

**CASE NO: 2006-CAA-00004**

*In the Matter of:*

**REGINALD MORTON,**  
Complainant

v.

**HERITAGE FARMS, LLC,**  
Respondent.

**ORDER APPROVING SETTLEMENT**

This case arises under the employee protection provisions of the Clean Air Act, 42 U.S.C. § 7622; the Safe Drinking Water Act, 42 U.S.C. § 300j-9i; and the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. § 1367; and the implementing regulations at 29 CFR Part 24. The Complainant, Reginald Morton, filed a complaint of discrimination with the Department of Labor against respondent, Heritage Farms, LLC. On October 18, 2006, the parties submitted a pleading styled "Stipulated Motion for Dismissal with Prejudice, Together with Motion that Confidential Settlement Agreement Be Filed and Retained under Seal," with accompanying settlement agreement which resolves all issues raised in the Complaint, for review and approval by the undersigned administrative law judge.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

Initially, I note that the parties are represented by counsel. Paragraph II.I. of the settlement agreement provides that both parties will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions. In the Stipulated Motion, the parties stated that the settlement agreement is confidential and includes confidential information and asked that the settlement agreement be maintained in confidence by the Office of Administrative Law Judges and that access to the agreement by third parties be restricted to the full extent that the law permits. Further, both parties asserted their pre-disclosure notification rights pursuant to 29 C.F.R. § 70.26, and thereby requested prompt notification should the settlement agreement become the subject of a Freedom of Information Act (FOIA) request.

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties' submissions in the case, including the settlement agreement,

become a part of the record in this case and are subject to the Freedom of Information Act (“FOIA”), 5 U.S.C. §552 (1988). FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties in this matter have indicated that the settlement agreement comprises and includes confidential information which they believe are exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of requests and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. §70.26. The settlement agreement in this case will be placed in a separate envelope and identified as being confidential information pursuant to the parties’ request.

Paragraph II.R. provides that the agreement shall be governed and construed under the laws of the State of Colorado. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States. See *Phillips v. Citizens. Ass.n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).

After careful consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the terms of the agreement to be fair and reasonable and adequately protect Mr. Morton. Furthermore, I believe it is in the public interest to approve the agreement as a basis for administrative disposition of this case and I therefore approve the settlement agreement.

Accordingly, this case is **DISMISSED** with prejudice.

**A**

Russell D. Pulver  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** This Order Approving Settlement will automatically become the final order of the Secretary of Labor unless, pursuant to 29 CFR § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C., 20210. Such a petition for review must be received by the Administrative Review Board within ten (10) business days of the date of this Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 CFR §§ 24.7(d) and 24.8.